

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

PGI POLYMER, INC.,

Plaintiff,

v.

CHURCH & DWIGHT CO., INC.  
KARMIN GROUP a/k/a Le GROUPE  
KARMIN,  
KARMIN INDUSTRIES,  
LAMI PRODUCTS, INC. and  
BI-LO, LLC,

Defendants.

Civil Action No.:  
3:15-CV-0214 (FDW)(DSC)

**MOTION FOR RECONSIDERATION  
OR IN THE ALTERNATIVE  
CONSENT MOTION FOR LEAVE TO AMEND**

**COME NOW** Defendants Church & Dwight Co., Inc., Karmin Group, Karmin Industries, LaMi Products, Inc. and BI-LO, LLC, by and through their legal counsel, and hereby move the Court to reconsider its Order [D.E. 62] striking Defendants' Amended Counterclaims. In the alternative, Defendants respectfully request leave to file [proposed] Amended Counterclaims. In support of the instant Motion Defendants state:

1. Defendants respectfully submit they timely filed the Amended Counterclaims [D.E. 57] as of right on October 8, 2015 pursuant to Fed. R. Civ. Pro. 15(a)(1)(B) and that written consent of the Plaintiff or specific leave of the Court was unnecessary.
2. Prior to filing the instant motion, Defendants contacted Plaintiff pursuant to the meet and confer obligation imposed by Local Rule LCvR 7.1(B).

3. Defendants informed Plaintiff that they intended to file the instant Motion for Reconsideration on the grounds that the Amended Counterclaims were timely filed as of right on October 8, 2015 and requested Plaintiff's position on the matter.
4. Plaintiff took the position that it had no position. Specifically, Plaintiff advised: "Plaintiff's stance in this case is not to take a position with respect to the accuracy of your calculations or their effect on the Court's order."
5. In the event that the Court remains unconvinced as to the timeliness of the Defendants' Amended Counterclaims, Defendants respectfully request leave to file Amended Counterclaims pursuant to Fed. R. Civ. Pro. 15 (a)(2).
6. Defendants further note that the [proposed] Amended Counterclaims are substantively identical to the original counterclaims advanced in this action. Both the original counterclaims and the [proposed] Amended Counterclaims include: 1) A declaration of non-infringement; 2) A declaration of invalidity; and 3) A cancellation action.
7. The only difference between the original counterclaims and the [proposed] Amended Counterclaims is that the latter contains additional factual recitations – which were provided in direct response to the 12(b) motion filed by Plaintiff.
8. Plaintiff has consented to Defendants' request for leave to file [proposed] Amended Counterclaims.
9. Finally, Defendants further rely on the Memorandum in Support of its Motion which is submitted contemporaneously herewith.

**WHEREFORE** Defendants respectfully request either (1) reconsideration of this Court's Order [D.E.62], or, in the alternative, (2) leave to file the [proposed] Amended Counterclaims.

Respectfully submitted,

This the 16<sup>th</sup> day of October, 2015

**COLLEN IP**

/s/ Jeffrey A. Lindenbaum

Jeffrey A. Lindenbaum

*Admitted Pro Hac Vice*

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